

# **COURT WATCH 2002-2003**

*Citizen Volunteers Look at How  
Montgomery County's District Court Handles  
Underage Drinking and Drunk-Driving Cases*

*Sponsored by*

**Montgomery County, Maryland's**  
*Drawing the Line on Underage Alcohol Use*

*August 2003*

## ACKNOWLEDGMENTS

The Chief Administrative Judge of the District Court of Montgomery County, Maryland, the Honorable Cornelius J. Vaughey, requested this Court Watch, which looks at how the court system handles underage drinking and drunk-driving cases. This study by citizen volunteers follows a prior Court Watch conducted in 1995-1996 that focused exclusively on the way the District Court dealt with underage drinking cases.

Leadership in developing this initiative was provided by Nancy Rea, coordinator during both Court Watches for Montgomery County's *Drawing the Line on Underage Alcohol Use* initiative. Assistance in designing the 2002-2003 Court Watch came, in part, from the State's Attorney's office led by Assistant State's Attorney Daniel Barnett. The Montgomery County Police Department's Alcohol Initiatives Unit led by Sergeant Jacques Croom encouraged this project's development and supported its implementation. William Zegowitz of the County's Department of Corrections' Alternative Community Service Program, briefed volunteers and assisted with their training. Innumerable others in the District Court system helped the Court Watch volunteers obtain dockets, understand the functions of the Court Clerk's office, and answer questions about court procedures. The County's *Drawing the Line* Committee followed this project carefully and connected it with other prevention efforts. Cappie Morgan, President of Counterparts Inc., worked alongside Nancy Rea to develop this study and prepare the final report.

The backbone of this Court Watch effort, however, was provided by its front-line workers—the six citizen volunteers who chose to spend a good portion of 2002 sitting in Montgomery County's District Court observing underage drinking and drunk-driving cases and recording the perceptions that form the core of this report. These volunteers were: Meg Baker, Alicia Beach-Halverstadt, Gail Ewing, Mike Kelly, Shelly Miller, and Leslie Thomas.<sup>1</sup> Thanks are due to each and all of them. Several of these volunteers also helped with the formulation and review of this report.

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For further information, or to obtain copies of this report, please contact the Montgomery County Department of Health and Human Services' Office of Substance Abuse Prevention Programs at (240) 777-1311.

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<sup>1</sup> Note: Two citizen volunteers from the National Association for the Advancement of Colored People (NAACP) spent one day observing in Traffic Court. They focused their attention on how people of color are dealt with by the justice system. Their conclusion was that the courts were even-handed in the way they handled all defendants. These volunteers did not continue as a regular part of the Court Watch team, but the conclusion of their day in court is worth sharing.

# **TABLE OF CONTENTS**

	<b>Pages:</b>
<b>Executive Summary</b>	
▪ Conclusions .....	5
▪ History .....	5
▪ Findings .....	6
▪ Recommendations .....	8
<b>Background</b>	
▪ Recent Changes in How Alcohol and Other Drug Issues Are Addressed in Our Nation, State, and County .....	10
▪ Use of “Court Watches” .....	11
▪ Court Watch 2002 .....	11
▪ Overview of the Court Observation Process .....	12
<b>What’s the Problem?</b>	
▪ The Impact of Alcohol Misuse on Our Nation and on Montgomery County .....	14
▪ Goals of Court Watch 2002-2003 .....	15
▪ Description of the 2002-2003 Court Watch .....	15
<b>Findings</b>	
▪ Overall Findings for Both Criminal and Traffic Court Alcohol-Related Cases .....	17
▪ Findings in Underage Drinking Cases .....	19
▪ Findings in Drunk-Driving Cases .....	23
<b>Recommendations</b>	
▪ Overall Recommendations for Both Criminal and Traffic Courts .....	26
▪ Recommendations in Underage Drinking Cases .....	29
▪ Recommendations in Drunk-Driving Cases .....	30
<b>Comparison of Findings Between the Two Court Watches (1995-1996 and 2002-2003) .....</b>	<b>32</b>
<b>Summary of Conclusions .....</b>	<b>35</b>
<b>Appendix</b>	
▪ Fact Sheet Describing the 2002 Court Watch .....	37
▪ Sample Court Observation Form .....	39
▪ Court Watch Volunteer Training Agenda and List of Materials, January 2002 .....	41
▪ Findings and Recommendations from the 1995-1996 Court Watch .....	43
<b>Figures</b>	
▪ Figure 1: Number of Cases Observed in Both Underage Drinking and Drunk-Driving Cases .....	12
▪ Figure 2: Defendant Present or Not Present in Underage Possession and Furnishing-Alcohol-to-a-Minor Cases .....	21
▪ Figure 3: Age and Gender in Underage Alcohol Cases .....	22

- Figure 4: Penalties After Suspension of Fines and Costs in Alcohol-Related Traffic Court Cases .....25
- Figure 5: Comparison of 1996 and 2002 Court Watch Findings in Underage Drinking and Furnishing-Alcohol-to-Minors Cases .....32
- Figure 6: Comparison in How Female Defendants are Handled in Underage Drinking Cases (1996 and 2002) .....33
- Figure 7: Comparison in How Male Defendants are Handled in Underage Drinking Cases (1996 and 2002) .....34

## **EXECUTIVE SUMMARY**

Six citizen volunteers trained in court-observation techniques spent much of 2002 watching how almost 425 alcohol-related cases were handled by Montgomery County, Maryland's, District Court. These citizens gathered data and perceptions about the way the District Court deals with cases that involve the violation of laws on the possession of alcohol by youth under the age of 21, the illegal furnishing of alcohol to minors, and driving vehicles with a blood-alcohol concentration level that is above the limit set by law. Between January and June 2002, 213 underage drinking and 208 drunk-driving cases were observed.

### **Conclusions:**

The good news is that the Court Watchers found that nearly all court personnel (judges, state's attorneys, police, the court clerk's staff, bailiffs, and the County Department of Correction's Alternative Community Service professionals) were genuinely interested in strengthening sanctions in alcohol-related cases. The Court itself requested the Court Watch, a positive act in its own right. Clearly the court is concerned about alcohol misuse.

Court Watch volunteers further concluded, however, that while progress has been made in some areas, when looking at drunk-driving cases, little has changed since September 2000 when a series in *The Washington Post* described Montgomery County's District Court as being consistently lenient in these cases. This comes in spite of: 1) increased national concern about the negative effects of the misuse of alcohol on community life, 2) recently strengthened Maryland state laws related to drinking and driving, and 3) the repeated statement by all parties involved in court that alcohol misuse underlies the majority of the cases it handles. This translates to repeated endangerment of our community by drunk drivers as well as a missing message to teenagers about the dangers—to them and to others—of illegal alcohol use.

### **History:**

Montgomery County's District Court has twice requested a Court Watch. The first "watch" was conducted in 1995-1996 and focused only on underage drinking cases. Its findings brought about specific, positive changes in the way 18-20 year olds convicted of illegal possession of alcohol are handled in the District Court's Criminal Court. Most importantly, it brought about a greater standardization of sanctions, making it impossible to "judge shop." The result of this is that by 2002 each offender in underage drinking cases has a relatively similar and equal experience in court.

In late 2001, the Administrative Judge of the District Court, concerned about the pervasive, negative impact of alcohol in a large proportion of all court cases, requested that a second Court Watch be conducted. The 2002 Court Watch focused on two courts: the District's Criminal Court where underage drinking cases are handled, and its Traffic Court, the venue for drinking and driving cases. The goal of the 2002 observation was to come up with a citizens' description of how these courts handle misuse-of-alcohol-cases and, based on this description, to make recommendations for strengthening the impact of court actions on both underage and adult offenders.

## **Findings:**

**Overall Findings in Both Criminal and Traffic Courts:** During the spring of 2002, Court Watchers regularly observed in both courts. They recorded data on standardized forms and noted their perceptions gained over the six months of their work. The clear consensus of this study is that Montgomery County's District Court is more lenient than it may think it is in its handling of alcohol-related cases, especially those having to do with drunk driving. In both underage drinking and drunk-driving cases the observers found that:

- ✓ The majority of the judges were not viewed by Court Watchers as being tough in alcohol-related cases either in the way they speak about alcohol misuse from the bench nor in the sanctions they impose. In the opinion of the Court Watchers, judges are missing an opportunity to use the bench as a bully pulpit to inform the public about the dangers of alcohol misuse by young people and by drivers.
- ✓ Sanctions are not as strong as they could be within the law (probation before judgment is offered by some judges even when it is not requested by the defense or state's attorneys; fines and court costs are waived for no obvious reason; and, more often than not, supervised probation is waived).
- ✓ There is an overriding sense of production-line justice. With such a large number of cases being handled daily in each court, the details of each case get lost in the shuffle, reducing the impact of court proceedings on defendants, both underage drinkers and adults.
- ✓ An enormous amount of time is wasted due to "no shows" (43 percent in Criminal Court and 21 percent in Traffic Court). This both clogs the courts and reduces its ability to deal firmly and constructively with each individual case. (Note: The Administrative Clerk of the court points out that the District Court has "no administrative or statutory procedure to do anything about "no shows," although if the person doesn't show up the Judge *can* impose sanctions." (Italics added by report writer.)
- ✓ Police could use more backing if they are to be effective voices in court. (Note: The Administrative Clerk of the District Court points out that such support needs to come from the State's Attorney's Office and from the Police Department itself.)
- ✓ The courts are less severe in the sanctions they give defendants in drunk-driving cases than they are in the sanctions imposed in underage alcohol possession case. This sends the message that although underage drinking is somewhat serious business, drunk driving is not that big a deal.

## **Findings in Underage Drinking Cases:**

A key finding of the 2002 Court Watch is that improvements have been made since 1995-1996 in the way underage drinking cases are handled. There is greater consistency in sanctions across the board in underage drinking cases than there was six years ago. This means that young people coming into court are dealt with even-handedly among the different judges (and assistant state's attorneys) with fines, court costs, and community service sanctions being roughly the same from judge to judge.

Other, more negative, observations in underage drinking cases include:

- ✓ Young offenders do not take their time in court seriously. This stems in part from friends who were at the same party being handled in the same court session, resulting in a party-like atmosphere in the hallways. It also stems from the huge press of court business that prevents an individualization of cases.
- ✓ The Alternative Community Service (ACS) program of the County's Department of Corrections is not providing information about all three of the alcohol and other drug education programs that are available. This reduces the number of young people selecting these constructive options.
- ✓ Judges do not consistently support the underage drinking law. One judge said in front of the courtroom and the underage defendant that he really thought that the drinking age should be set at 18, not 21.

#### **Findings in Drunk-Driving Cases:**

The Court Watch volunteers agreed to a person that the consequences of drunk driving are inadequate to protect other drivers on the road.

Leniency in drunk-driving cases showed up in the following ways:

- ✓ Judges sometimes give the impression of being on the defendant's side, accepting defendant's self-description as being social drinkers who indulge rarely or as addicts who are therefore not fully responsible for their actions.
- ✓ Judges are missing a "teachable moment." Rarely do judges speak forcefully from the bench about the deadly consequences of driving while intoxicated.
- ✓ Fines are considerably lower than they are allowed to be within the law. Without even asking if defendants have financial problems, court fees and other costs are regularly waived or reduced by more than half.
- ✓ Probation before judgment (PBJ) is given frequently by judges without request by defense or state's attorneys.
- ✓ Unsupervised probation is given in the largest portion of cases. It is given more often than supervised.
- ✓ Underage drivers who had been drinking were charged *only* with the drunk driving charge, not for illegal possession of alcohol at their age. The court, the State's Attorney's Office, and the Police Department did not acknowledge the underage factor. Court Watchers felt that the underage status should be featured and that additional sanctions should be imposed.

## **Recommendations:**

### **Overall recommendation:**

Court Watch 2002-2003's main recommendation is that Montgomery County's District Court—in both Criminal and Traffic Court cases—should more consciously and consistently convey the message that alcohol misuse has concrete consequences and is “serious business.” In the case of underage drinking it endangers young people's mental and physical health. In the case of drunk driving it endangers all other drivers on the road.

Ways this overall message can be conveyed are to:

- ✓ Strengthen sanctions across the board by raising fines (at least to keep up with inflation), increasing community service hours, and reducing the number of PBJ decisions.
- ✓ Take greater advantage of “teachable moments.”
- ✓ Tighten administrative practices such as tackling the “no show” issues, balancing the cases allocated to each courtroom, and providing more support to police testifying in alcohol-related cases.
- ✓ Improve Circuit Court backing of District Court decisions.<sup>1</sup>

### **Recommendations in Underage Drinking Cases:**

Court Watchers recommend several ways to increase the impact of the court experience:

- ✓ Individualize cases: Reduce the sense of “cookie-cutter” justice by taking a few additional seconds in court to individualize each case.
- ✓ Ensure proportional justice: Make sure that the young people who choose to go to trial but are then convicted of underage drinking offenses don't receive lower sanctions than those who volunteer from the start to take part in the County's diversion program.
- ✓ Educate offenders: Require an alcohol and other drug education component be present in each diversion program. Also, strengthen these programs and even offer them more than once to offenders. Studies show that often the first several classes don't take hold. Right now, court sanctions go right from ACS the first time to \$1,000 the second offense. Maybe a portion of the \$1,000 could go to further, intense, long-term education to attack the problem.
- ✓ Target providers of alcohol to youth: In a social marketing anti-furnishing campaign, make a special target of adult men who are the primary providers of alcohol to teenagers. (During the Court Watch *only* men showed up as accused providers.)

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<sup>1</sup> This Court Watch did not include any observations of Circuit Court. However, judges and state's attorneys repeatedly mentioned to Court Watch volunteers that they avoid higher sanctions out of concern that such cases will be appealed to the Circuit Court, whose docket already is clogged and whose backing of District Court decisions is uncertain.



- ✓ Strengthen sanctions for youth with prior offenses. Second-time youthful offenders were not perceived by Court Watchers as receiving significantly harsher sanctions than those who appeared in court for the first time.

### **Recommendations in Drunk-Driving Cases:**

Court Watchers felt that the message the District Court conveys in drunk-driving cases should be significantly strengthened:

- ✓ Use the bench as bully pulpit: Judges should speak more forcefully from the bench about the serious consequences of drunk driving.
- ✓ Strengthen sanctions: Significantly increase sanctions for those convicted of driving drunk (impose maximum fees, make PBJ the exception, require supervised probation, and take away drivers licenses).
- ✓ Identify underage drinking-and-driving defendants. Handle young people ages 18-21 differently from adults in Traffic Court, charging them with both drunk driving citations *and* illegal possession of alcohol.

In conclusion, the 2002-2003 Court Watch found that an unintended disconnect exists between court personnel's view that alcohol negatively underlies a huge percentage of all court cases and an excessive leniency in sanctions, especially in Traffic Court. The extremely large number of cases, as well as the natural courtesies embedded in an egalitarian meting out of justice, seem to lessen the sharp message that harm is done when young people consume alcohol illegally or when someone who is drinking gets caught behind the wheel of a car—a deadly weapon.

Given that the 2002-2003 Court Watch was requested by the court itself and that the large majority of professionals involved in the Courts were supportive of this effort, the citizen volunteers involved as well as the *Drawing the Line* community hope that these findings will be taken seriously and that the recommendations included in this report will be implemented.

# **REPORT ON THE 2002-2003 “COURT WATCH”**

The target audience for this report is broad. The Court Watch was requested by the administrative judge of the District Court, Cornelius J. Vaughey, with the goal of informing the various professionals in the system (judges, state’s and defense attorneys, police, diversion program personnel, and court staff) about what the system looks like to observant citizens and what recommendations might be made for its improvement. Additional audiences are the many people involved in Montgomery County, Maryland’s, diverse *Drawing the Line on Underage Alcohol Use* initiative as well as the public at large.

## **BACKGROUND**

### **Recent Changes in How Alcohol and Other Drug Issues Are Addressed in Our Nation, State, and County:**

In 2001, Maryland’s legislature adopted significantly tougher laws to deal with drunk driving, including implementing the federal .08 Blood Alcohol Content (BAC) standard<sup>1</sup>, creating sanctions for those people who refuse to take the breath test (making it possible for prosecutors to tell judges or juries when an accused drunk driver has refused to take a breath test), and putting restrictions on open containers of alcohol in cars. This strengthening of state laws stemmed in part from growing public concern across the country about the problems that are caused by misuse of alcohol both among young people and in the community at large, especially by people of all ages who drink and drive.

At the Montgomery County level, the police, the courts, County government, and private citizens have been working together for several years to raise public consciousness about the negative impact alcohol can have on people’s lives, and to deal with the consequences of its misuse. A leading initiative in the County’s education and prevention efforts has been *Drawing the Line on Under-21 Alcohol Use (DTL)*, a coalition of over 30 public and private organizations formed in the early 1990s to help prevent youth under the age of 21 from drinking, and especially from drinking and driving.

At the national level, research that shows the effectiveness of changing community norms and standards in reducing problem behaviors over the past ten years in the United States has resulted in a sea change in public policy and attitudes towards alcohol-related issues, especially drunk driving. Federal legislation now encourages states to raise the drinking age to 21, lower the blood-alcohol content level that identifies someone as being legally impaired when driving, and ban open containers of alcohol in cars. One by one, many state legislatures have adopted these more restrictive standards, prodded by strong incentives, including the loss of federal dollars to states that don’t choose to comply.<sup>2</sup> Maryland’s BAC limit of .08 percent is less stringent than the levels set as law in some countries. (The average 170-pound male would have to consume more than four 12-ounce cans of beer within one hour on an empty stomach to reach .08 BAC.) In the Czech Republic, for example, the allowable amount of alcohol in the blood of a person

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<sup>1</sup> A study in Illinois in the year after that state adopted the .08 standard found a 13.7 percent decline in drinking drivers involved in fatal crashes. (Washington Post Editorial, October 2, 2000.)

<sup>2</sup> The Montgomery Journal, October 2001.

driving a car is *zero*. In Sweden and Norway, the blood alcohol limit is .02. In Norway, if a person is convicted of driving while drunk, he or she loses the right to drive for one year; if that person is convicted a second time, they lose their driver's license forever.

A key player in preventing underage drinking—also in curbing drunk driving—at the local level is Montgomery County's District Court. Charges of possession of alcohol by a minor, furnishing alcohol to a minor, and alcohol-related traffic cases are handled in the criminal and traffic divisions of this court.

The professionals that serve the District Court are involved daily with alcohol issues. Police break up parties attended by young people ages 18-21 where alcohol is illegally served, and they apprehend drivers who have been drinking, both young people and adults. Assistant state's attorneys prosecute alcohol-related cases as they go through the court system, judges rule on these cases and impose sanctions, community service personnel lead diversion programs, and probation officers enforce sanctions.

If any of these arms of the local judicial system fails to hold the line on the misuse of alcohol—be it by looking away when underage drinkers get into trouble or by making excuses for people of any age who drive a car when they are incapacitated—society at large suffers. National statistics show that almost 50 percent of fatal car crashes involve alcohol. Date rapes (it is estimated that up to 90% of college campus sexual assaults are alcohol-related) and death from alcohol poisoning (1,300 per year nationally) are frequently connected to alcohol misuse.

### **Use of "Court Watches":**

In Montgomery County, the chief administrative judge of the District Court has twice asked for help from *Drawing the Line* in the form of a "Court Watch." During a Court Watch, citizen volunteers sit in court and take objective notes on what happens from a lay person's perspective. In 1995-1996, 14 citizen volunteers conducted a Court Watch focused exclusively on underage drinking. From that watch stemmed recommendations on making sentences for young people consistent for similar charges, on ways to handle youth with repeated alcohol-related offenses, on the value of following up with young people who don't show up for their day in court, and on the importance of using young people's time in court as a "teachable moment." By 2001, however, over half the judges and many of the other professionals in the District Court had changed, and court officials again asked volunteers to take an outsider's look at their system as it handles alcohol cases. This time, *Drawing the Line* volunteers were asked not just to look at the way young people ages 18-21 charged with illegal alcohol use are dealt with, but also to monitor how drunk driving cases in the County's traffic court are handled.

Other types of Court Watches focus on individual cases. Mothers Against Drunk Driving (MADD) frequently observes drunk-driving cases either to assist victims or to draw attention to a particular case. In some states, trained lawyers observe cases and follow up by discussing with judges how the cases were handled. This report focuses on the observations and perceptions of ordinary citizens observing the court as a process.

### **"Court Watch" 2002-2003:**

All the players involved in the County's District Court—police, judges, state's attorneys, prevention personnel, treatment providers, community service staff, and both the County's Department of Corrections and Health and Human Services personnel—helped design the 2002 Court Watch. In January 2002, volunteers were trained. Later in the spring during two six-week

periods, six volunteers spent almost 200 hours observing both Criminal Court, on mornings when the underage drinking cases are handled, and Traffic Court, where Driving While Impaired (DWI) and Driving Under the Influence (DUI) cases constitute a major part of the court's dockets four afternoons a week. In late 2002, the perceptions of the Court Watchers were tabulated and written into a draft report that was then reviewed by all court personnel involved in alcohol-related cases (judges, state's attorneys, the clerk of the court, police, Alternative Community Service personnel, County Health and Human Services Substance Abuse Prevention professionals, and *Drawing the Line* staff and volunteers). Early in 2003, comments from reviewers were incorporated into this report and in mid-2003 Court Watch volunteers and *Drawing the Line* staff met with Judge Cornelius Vaughey, who had requested the watch. In July 2003, a Court Watch Action committee was formed to oversee the release of this report and to push for implementation of its recommendations.

### **Overview of the Court Observation Process:**

- ✓ Volunteers observed 421 cases in the District Court between February 12 and May 26, 2002. Two hundred and thirteen of these cases took place in the Criminal Court and addressed underage alcohol possession or furnishing of alcohol to minors cases. Two hundred and eight cases were observed in the District's Traffic Court and had to do with driving while intoxicated/driving under the influence (DWI/DUI) cases.
- ✓ Thirteen out of fourteen sitting judges were observed (plus some visiting judges who come to help handle the large number of cases in court). All of these judges were observed on multiple occasions, two of them as they handled 59 underage drinking cases each. The largest number of observed cases handled by any one judge in Traffic Court was 39. The chart that follows summarizes the cases observed by judge.

<b>Name of District Court Judge</b>	<b>Cases Observed in Criminal Court: (Possession of Alcohol by a Minor or Furnishing Alcohol to a Minor)</b>	<b>Alcohol-Related Cases Observed in Traffic Court</b>	<b>Total Number of Cases Observed Per Judge</b>
N/A	0	16	16
Algeo	24	1	25
Bernard	0	10	13
Collier**	4	34	38
Craven	0	17	17
Everngam	1	2	3
Hamilton	26	1	27
Harrington	59	10	69
Johnson	59	0	59
Lohm**	0	16	16
McCormick	31	14	45
McKenna**	0	10	10
Mitchell	2	39	41
Wolfe	7	38	45
	213	208	424*

**Figure 1: Number of Cases Observed in Both Underage Drinking and Drunk-Driving Cases**

\*Two cases observed had two judges. This accounts for the larger number of cases per judge than of cases observed in each court.

\*\*Visiting judges who return from retirement to help handle District Court cases.

- ✓ Court Watch volunteers looked not just at judges, but also at the ways the various court personnel (state's and defense attorneys, bailiffs, court clerks, police, and Alternative Community Service personnel) interacted during court time.
- ✓ The information collected during the 2003-2004 Court Watch was compiled into a database that was analyzed and used in the development of this report. The charts in this document visually represent that data.
- ✓ A related activity conducted during this same period of time used focus groups and individual interviews to explore how young people ages 16 to 20 view alcohol use among their peers and the effectiveness of prevention activities. This report became available in the fall of 2002.
- ✓ Court Watchers gathered and made sense of information obtained during the 2002-2003 Court Watch in six different ways:
  1. Through formal presentations made to them during a training period by the various parties involved in the court: judges, police officers, corrections officials, and state's attorneys.
  2. Using standardized reporting forms to capture the details of each case, including statements made by court personnel during the process. (A copy of this form is contained in the Appendix.)
  3. Recording informal statements made by participants in the court, including defendants, the defense bar, bailiffs, court clerks, prosecutors, police, and judges.
  4. Meeting twice as a group during a five-month period to ask questions, share perceptions, and seek agreement on findings and recommendations.
  5. Reviewing the draft report. All Court Watchers were given copies of the draft report and were asked for their input. Their comments have been incorporated into the final document.
  6. Serving on the Court Watch Action Group. Several of the original Court Watchers, some of whom also served during the 1995-1996 Court Watch, have continue their involvement with this project by agreeing to serve on the *Drawing the Line's* Court Watch Action Group, which is taking responsibility for publicizing the findings of the 2002-2003 Court Watch and for promoting adoption of its recommendations.

The report that follows describes volunteers' findings and makes recommendations for strengthening the County's response to alcohol misuse on two fronts—underage drinking and drunk driving. It also details the process used to capture observations in both courts, and contains charts that display the data collected.

## **WHAT'S THE PROBLEM?**

*"Drunken driving is the most frequently committed violent crime in the nation."*

*The Honorable Michael D. Barnes, Former Member of  
Congress representing Montgomery County*

*"We know that underage drinking is a precursor of many problems, including alcohol poisoning, date rape, alcoholism, and future trouble with the law."*

*Montgomery County Journal, January 7, 2000*

### **The Impact of Alcohol Misuse on Our Nation and on Montgomery County:**

Alcohol-related problems are found in every community. A federally appointed task force released a report in April 2002 that showed that 1,400 college students are killed each year in alcohol-related accidents, and that drinking by college students contributes to 500,000 injuries and 70,000 cases of sexual assault or date rape (The Montgomery Journal, May 16, 2002.)

In September 2000, The Washington Post ran a three-part series entitled "A County's High Tolerance." This series caused a great deal of comment in Montgomery County because it showed the District Court as dealing leniently with repeated drunk-driving offenses. The Post's opening article on September 24, 2000 by Katherine Shaver and David Fallis stated: "Across Montgomery County, drunken drivers who have been arrested time and again, who repeatedly violate probation and who have killed others remain on the roads. They benefit from legal loopholes and a court system that often resolves drunken driving arrests by reducing charges and giving light sentences."

The cost of leniency is high. Statewide, drunken drivers cost Maryland victims and taxpayers \$1.4 billion in 1998, including emergency services and lost wages. In 1999, for Montgomery County alone these costs reached at least \$30.5 million (The Washington Post, September 24, 2000, Shaver and Fallis).

Montgomery County is not alone. Nationally, efforts to curb drunk driving are failing to reduce this violent and expensive crime. The November 26, 2001 article in The Washington Post, also by Shaver and Fallis, points out that "after dropping 37 percent from 1982 to 1994, the number of drunken drivers in fatal crashes with a blood alcohol content level (BAC) of .10 or above remained virtually unchanged from 1994 through 1999. The year 2000's six percent increase to 10,408 was the largest annual increase in drunken driving since 1986."

The Montgomery County District Court sees alcohol-related issues every day as it administers its Criminal Court where underage drinking cases are handled. The Criminal Court also adjudicates additional issues where alcohol misuse has impact—cases of domestic violence and, until recently, child abuse. In the District Court's Traffic Court, which is held four afternoons a week, almost half of the cases on any given day have to do with drunk driving, according to police and state's attorneys who talked with Court Watchers.

*"In 2000, 16,653 people were killed in alcohol-related crashes and another 310,000 persons were injured. [This] is a staggering number of Americans killed and injured by a preventable condition."*

*Jeffrey W. Runge, MD*

*Administrator, National Highway Traffic Safety Administration,  
2001, The Washington Post, November 26, 2001*

### **Goals of Court Watch 2002-2003:**

It is within this national and County context of ongoing problems stemming from misuse of alcohol that Montgomery County's District Court turned in late 2001 for help to citizen volunteers. Judges, police, state's attorneys, and community service personnel helped craft the goals of the County's second Court Watch. They were to:

- ✓ Raise the visibility of both underage drinking and alcohol-related driving cases that are handled by the District Court.
- ✓ Improve how the different parts of the court system interact so as to increase efficiency and effectiveness in handling underage drinking cases as well as to increase the impact of DWI sanctions.
- ✓ Increase the positive impact on young people of their time in court so that these youth: 1) understand the law better; 2) develop a healthier respect for sobriety, especially when related to driving; and 3) learn to operate as more responsible citizens both before and after the age of 21.
- ✓ Seek ways to reduce court caseloads by decreasing repeat offences. (These offences often are more serious than the first infraction and they definitely use up more of the court's resources. Note: Identifying defendants with priors is the responsibility of the Police or the State's Attorney's Office.)
- ✓ Heighten the court's attention to alcohol abuse issues that underlie a huge proportion of cases in county courts.

### **Description of the 2002-2003 Court Watch:**

#### **Collaborative Planning of the Project:**

This project was sponsored by Montgomery County's *Drawing the Line on Underage Alcohol Use* initiative, a coalition of public and private organizations focused on reducing problems caused by alcohol misuse among youth under the age of 21 or resulting from alcohol abuse that began as underage drinking. The actual design of the Court Watch was done in collaboration with the many professionals involved in the District Court. Through meetings with the Chief Administrative Judge of the District Court, the Assistant State's Attorney, the Department of Corrections' Alternative Community Service (ACS) staff, and personnel in the Court Clerk's office, the volunteer observation forms were developed, ways of obtaining dockets were agreed on, and the parameters of the project were established.

### **The Volunteers:**

In January 2002, representatives of each of these County offices took part in an all-day training of eight volunteers. Six of these volunteers stayed the course, working through both phases of the Court Watch.

These volunteers were a highly professional group. They included a leader from Maryland's Mother's Against Drunk Driving (MADD) organization, the former Montgomery County Councilwoman who began the *Drawing the Line* project, the head of the County's "Project Prom" initiative, professionals from the fields of fire fighting, Health and Human Services, and Recreation (who volunteered their time outside of their regular jobs), and community-minded individuals. (A list of names of these volunteers is included in the acknowledgments section of this document. Information on the training of these volunteers also can be found in the Appendix.)

*"I felt the Court Watch experience was very worthwhile. I have a far greater empathy for those who work in the system and far more understanding of what justice is in the real world."*

*Gail Ewing, Former Montgomery County Councilwoman*

### **Observation Process and Forms:**

For two periods of six weeks in the spring of 2002, these volunteers came to court for several days a week wearing large pink buttons that identified them as Court Watchers. Each time they introduced themselves to the state's attorneys handling that day's cases, observed what went on during both underage drinking and drunk driving cases, took notes, asked questions of police and state's attorneys when there was confusion, spoke with judges whenever judges asked them to approach, and then filled out observation forms (a sample form is in the Appendix), and submitted these forms to the DTL coordinator. This information was entered into a database for analysis. Twice during this period, the volunteers met as a group to share perceptions, identify themes, and to fine-tune the observation process. They also reviewed the report that was created from the material they submitted, made suggestions for its presentation, and a certain number of them remain involved in the implementation of the report's recommendations. The information presented in this report is the result of their work.



## **FINDINGS**

Because Court Watch volunteers wore very large pink buttons when they were in court, judges, defense and state's attorneys, police, and other court personnel were aware when they were being observed. The findings that follow are drawn from the observation sheets volunteers kept while in the criminal and traffic courtrooms. It is not known if court personnel behave somewhat differently when they are not being watched.

It should be noted that the judges in the District Court welcomed the Court Watchers. Many took time to talk with them and to invite questions. In fact, the great majority of the other court personnel—from state's attorneys to bailiffs to court clerks—were unfailingly courteous and supportive of this initiative. There seems to be a general attitude that people connected with the court welcome suggestions for its improvement. It is within this atmosphere of “let's make it better” that the findings and recommendations listed below are presented.

Reaction by the defense bar was mixed. Some defense lawyers raised concerns that the Court Watchers skewed the judicial process, possibly prompting stronger sanctions that might, they felt, be unfair to their clients. One went so far as to write the state to complain about the Court Watch. The state's Chief Judge, responded, “I have more faith in our judges than to believe they would be intimidated by a 5-inch pink badge ... I encourage and applaud Court Watchers.” Other defense lawyers expressed support for an attempt to improve court efficiency or for greater attention to alcohol, given its harm to their clients and to society.

### **Overall Findings in Both Criminal and Traffic Court Alcohol-Related Cases:**

The Court Watch volunteers observed in both courts during January, February, March, April, and May of 2002, often working in pairs. Each observation was written up in the same format and was forwarded to the coordinator of this project. Volunteers observed both morning (criminal) and afternoon (traffic) courts for an intensive six-week period, then took a break for two weeks, during which time a meeting was held to share perceptions and to fine-tune the observation process. Then another six weeks of observation took place, followed by a final debriefing session of volunteers. The findings, both on the observation sheets and in the two debriefing meetings, were consistent among the volunteers.

The data submitted and analyzed supports the Court Watch volunteers' anecdotal perception that Montgomery County's District Court is not tough enough in its handling of alcohol-related cases, especially those having to do with drunk-driving. Data collected shows that in both courts:

- **The majority of the judges were not viewed by court watchers as being tough in alcohol-related cases.** Although there were times during almost every day of observation when one judge or another would say something from the bench about the dangers of alcohol, the majority of both underage possession and drunk-driving cases were handled without comment. In both Criminal and Traffic Courts, the Court Watchers felt—and data supported their perception—that the illegal use of alcohol by youth and the misuse of it by drivers was neither highlighted by judges nor reflected in sanctions.

In fact, this perception was so strongly stated by Court Watchers during the debriefing session at the end of the first half of the Court Watch process that the observation sheets used in court were changed for the second six-weeks of the watch to allow observers to

rate the judges on the seriousness with which those officials seemed to view alcohol as an important factor in the alcohol-related cases in both courts. On a scale of 1 (not a serious issue) to 5 (a very serious issue), judges in the second half of the “watch” rated an average of 2.6.

- **Sanctions are not as strong as they could be within the law:**
  - ✓ Judges offer Probation Before Judgment (PBJ) even when defense and state’s attorneys don’t ask for it (or, more likely, even oppose it).
  - ✓ Fines are reduced and court costs are waived without overt reasons for doing so being given.
  - ✓ Supervision of probation is waived more often than not.
  - ✓ Several District Court officials explained that they keep sanctions low for fear of prompting appeals to the Circuit Court. (Because defendants in District Court have an automatic right to retry the case or to seek a new sentence in Circuit Court without having to show that the district-level proceedings were legally flawed, appeals are a constant concern of those giving out sanctions. This results in prosecutors and judges settling for penalties that won’t encourage defendants to have the case re-heard in the higher court. Appeals drain resources from the State’s Attorney’s Office, clog the Circuit Court docket, require additional time from witnesses, and may result in the same or lesser penalty. Some cases are dropped due to logistical problems.)
- **There is an overriding sense of production-line justice.** The number of cases dealt with each day is so overwhelming that the details of each seem lost in the shuffle.

*“The inevitable effect of overcrowded courts is the criminal justice system gets watered down.”*  
*The Washington Post, 9/26/02*  
*Katherine Shaver and David Fallis*
- **An enormous amount of court time is wasted:** The number of “no shows” in both courts is appalling (43 percent in Criminal Court and 21 percent in Traffic Court)! This is a huge waste of time for courts that are overburdened. This press of useless business is one of the reasons for the sense of “production-line justice.” (Although the court has no administrative or statutory procedures to do anything about this, the Judge can impose sanctions.)
- **Police are under fire:** In both courts, the police officers that are present are under fire by the defense attorneys. This is understandable, given the need of defense attorneys to support their clients, but in the perception of Court Watch volunteers, these policemen and women are dealt with more harshly and more aggressively than anyone else in the courtroom. Court Watchers felt that the police deserve additional training in testifying techniques so that they can be better equipped to present evidence and handle cross-examination.

- **The courts are tougher with underage alcohol possession cases than they are with drunk-driving cases.** This is the perception of volunteers as they look primarily at the fines imposed in each courtroom. In 50 DWI cases judged “guilty,” for example, 21 ended up paying the court less than \$150.00, whereas in 9 underage-alcohol possession cases the fines exceeded \$200.00. This translates to defendants getting the message that the court considers underage drinking to be somewhat serious business, but the court is not taking drunk driving as seriously.
- **A missed opportunity:** Judges are in a position to “lead the charge” in terms of using the bench as a bully pulpit about the dangers of alcohol to young people, to society, and especially on the highway, but this happens rarely. To the Court Watch volunteers, the judges give the impression that first-time offenders, be they underage youth or adults, have made just a minor misstep in terms of their misuse of alcohol. Court Watchers felt that, instead, the seriousness of alcohol misuse, especially when a car is involved, should be the dominant and consistent message.

Note: Judges, state’s attorneys, police, and courtroom personnel were unfailingly courteous and collaborative. Everyone seemed to want to learn from the Court Watch process. Judges commented that they take alcohol seriously; courtroom personnel indicate that the judges may not be aware that a general perception is that people get off too easy in cases where alcohol is a factor.

### **Findings in Underage Drinking Cases:**

An important finding is that improvements *have* been made in the Criminal Court that handles underage drinking cases since the 1995-1996 Court Watch. Positive changes in two important areas are:

1. There is greater consistency among judges in giving sanctions. This means that young people coming into court are dealt with even-handedly by the different judges.
2. A trial-diversion program has been created and seems to be working successfully. Under this program, first offenders may choose to by-pass a trial and opt for the Alternative Community Service (ACS) program of the County’s Corrections Department. If these young people then complete a certain number of hours (set by the intake officer with input from the state’s attorney), the underage drinking charges are dropped. Later, these young people may request that the record of their charges be expunged. As part of ACS program, the offenders may, but are not required to, substitute three hours of alcohol education for six of the required community service hours.

Both of these changes are important improvements in the District Court system.

Issues that, in the opinions of the 2002 Court Watchers, still remain problematic are:

- **Underage offenders do not take their time in court seriously:** The behavior of the 18-21 year olds and their parents both in the hallways outside court rooms and in the courtroom itself shows that many of them think that the court proceedings are a joke, something relatively unimportant that can be quickly resolved.

*“There was a large group of kids from one party. To me it seemed to be a bad idea to allow these kids to have a “reunion” of sorts. The kids laugh and joke with each other while waiting for court to begin. The atmosphere does not feel serious. Having to face the situation alone or with just your parent would feel more intimidating than being there with your friends. None of these young people appeared to take their time in court seriously. The judge dealt with each young person rather matter-of-factly. It was like assembly-line justice. The kids didn’t see more serious offenses being dealt with as the docket was filled with the partygoers. Seeing the more serious cases might give the kids more food for thought.”*

*Court Watch Volunteer, Spring 2002*

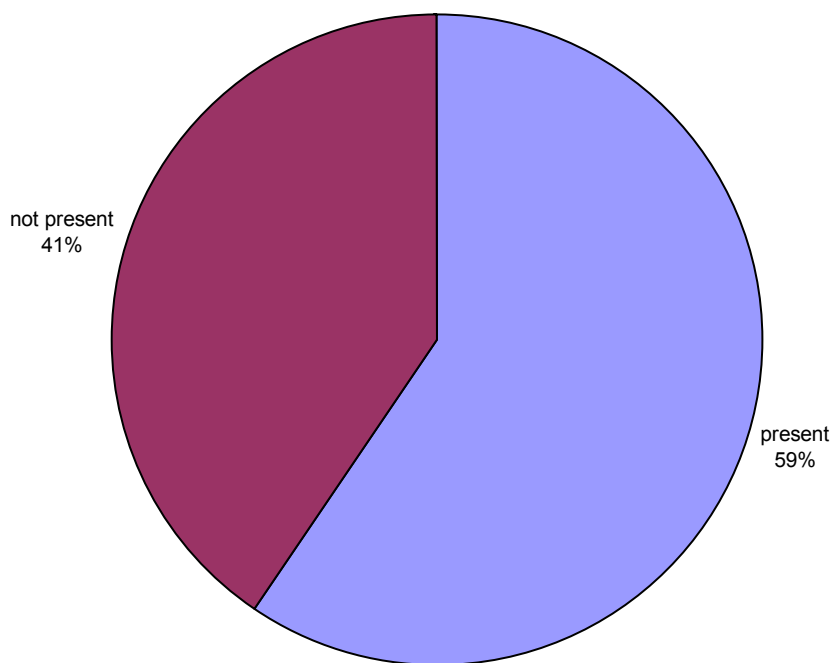
This story illustrates the tension that exists between operating efficiently (as in having alcohol cases dealt with at one time and in a like manner) and the lesser efficiency of *not* having these cases grouped.

The latter approach allows young people to see non-familiar criminal cases being handled by the courts, which may serve as a warning. Separating these cases might result in having each case be dealt with on its unique merits.

A counter-balancing argument is that grouping these cases reminds the judges of the high number of underage defendants and reinforces to court personnel and to the public the large amount of underage alcohol misuse.

No matter which approach prevails, in the longer run of handling underage drinking and furnishing cases, the District Court’s Criminal Court would do well to find ways to make its proceedings seem less lightweight.

- **The high rate of no-shows in underage drinking cases shows that the citation for underage possession and for furnishing alcohol to minors is not taken seriously:**



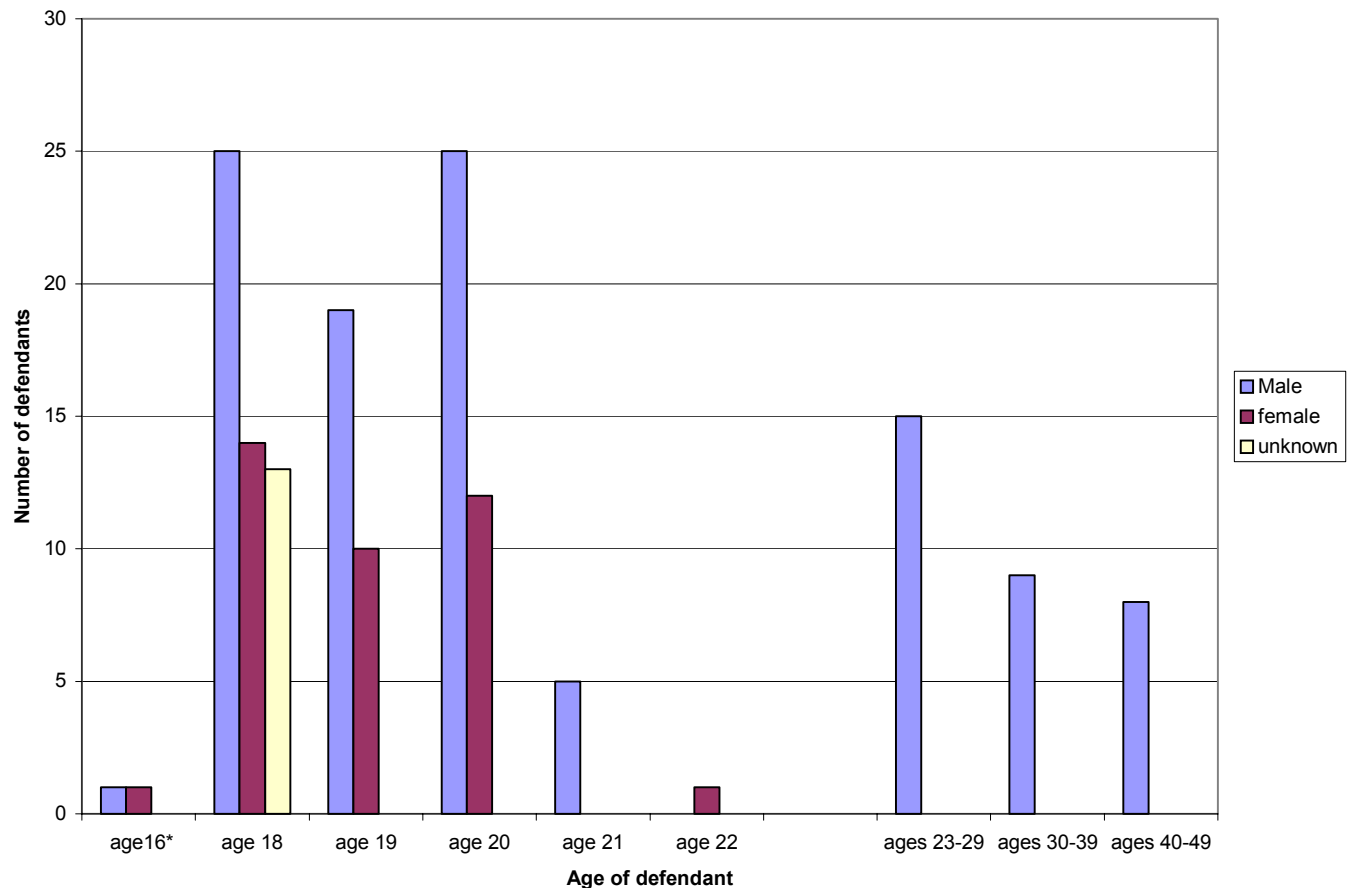
**Figure 2: Defendant Present or Not Present in Underage Possession and Furnishing Alcohol to a Minor Cases**

The fact that 41 percent of the possession and furnishing defendants do not show up for court indicates that underage possession of alcohol and furnishing alcohol to minors citations are not taken seriously either by the young people or by the furnishers. Through the teenage grapevine, many of the young people know that nothing happens if you don't come to court the first time. When there is a "no show," a judge issues a summons or warrant. When the defendant eventually appears, no mention is made of the fact that he or she did not come the first time. Perhaps if the penalty were increased for people who have unexcused absences, more people might show up the first time. This high no-show rate both wastes court time and conveys the message that underage possession of alcohol and furnishing alcohol to minors is not "serious business."

- **The County Department of Correction's Alternative Community Service program is missing some bets:** Volunteers observed no mention made to defendants selecting ACS of the educational options additional to the once-monthly class run by the County Department of Corrections. This translates to fewer young people choosing alcohol education than might do so if the three alternatives that exist were offered.

- **Furnishing of alcohol to minors is primarily a male offense.** The chart that follows shows that in cases observed by Court Watchers over a six-month period the older adults accused of furnishing alcohol to minors were all males.

This chart also shows that nearly one quarter of the defendants in Criminal Court on underage drinking charges are over the age of 21. Those under 21 may be charged with possession of alcohol by a minor and with furnishing. Those over 21 may only be charged with furnishing.



**Figure 3: Age and Gender in Underage Alcohol Cases\***

*\*Note from Figure 3 chart: The fact that Court Watchers observed some youth in court at age 16 when defendants this young are supposed to be handled in Juvenile Court shows that in a small percentage of cases age-related mistakes are made.*

- **The bench doesn't always support the ideas behind the underage drinking law:** In one case observed by volunteers, the judge while on the bench said that he didn't think the law that sets 21 as the drinking age for young adults is appropriate. He went so far as to apologize to the defendant for having to enforce it (he thought the age should be 18). This story may illustrate that all judges do not keep up with research on alcohol,

generational differences in drinking patterns, alcohol's effect on young people whose brains are still developing, and the results of alcohol-related problem behaviors.<sup>1</sup>

### **Findings in Drunk-Driving Cases:**

*Drunken drivers are little bombs out on the road waiting to go off.  
Montgomery County Police Officer*

In spite of higher federal BAC standards, strengthened state laws, and an increase in public ire caused in part by The Washington Post's three-part series of articles in September 2000 on how leniently drunk driving is dealt with by Montgomery County courts, the perception of the 2002 Court Watch volunteers was that there has not been a large change since 2000 in the way drunk-driving cases are handled in the Traffic Court. On many fronts, the Traffic Court seemed lenient:

- **Not all but many judges give the impression of being on the defendant's side.** For whatever reasons, many judges seem to bend over backwards to give drunk-driving defendants the benefit of many doubts, letting them describe themselves as social drinkers or as addicts who need treatment (and who are therefore not fully responsible for their actions). This raises the question of what the purpose of the court is—is it to help the defendant deal with their personal problems or is it to protect the public by taking steps that will make the defendant less likely to hurt others in crashes or violent crimes while under the influence of alcohol?

*"[Drunk driving] is a victimless crime unless [the driver] kills someone. Have you ever known someone convicted of drunk driving? We don't think of them as people who go in and rape someone or commit a robbery. I think society wants to help people who are addicted."*

*Montgomery County Circuit Court Judge Paul H. Weinstein*

Defendants and their lawyers have almost a pattern—a litany—of what they think the judges want to hear in DWI cases: alcohol evaluation already completed, a treatment program already started, good-faith efforts at reform, or character references of some sort. When these factors are in place, defendants usually receive minor sanctions, including the almost automatic forgiveness of court costs and a reduction of fines. The lethality of a car driven by someone who is impaired is rarely mentioned.

*"A man in Traffic Court with a prior in 1992 for which he received PBJ, got suspended jail time, a small fine, and unsupervised probation—even though he'd been evaluated as a problem drinker. "*

*Court Watch Volunteer, February 2002.*

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<sup>1</sup> A Drawing the Line initiative that was intended to complement the Court Watch began providing short, research-based information on postcards sent to judges. These cards highlighted the effect of alcohol on underage drinkers in terms both of their growth and development and their behavior. Unfortunately, this initiative halted when a key staff member left County government. Resuming this effort is one suggestion made in this Court Watch report.

Note: Some judges do speak strongly from the bench. On March 14, 2002, one judge said to a defendant: "You were compliant during probation, but you've made a choice to drink and drive since then, and these [choices] have consequences. You pose a risk to yourself and others." This kind of statement, however, was the exception.

▪ **Sanctions are considerably lower than they could be under the law.**

*Drunken driving cases account for one-fourth of the criminal and serious traffic charges filed in the County's District Court . . . Judges and prosecutors clear thousands of [these] cases through plea bargains or by imposing sentences a defendant is unlikely to appeal to another court.*

*Washington Post Series on How Drunk Driving is Handled by the Courts in Montgomery County, September 25, 2000, Katherine Shaver and David Fallis*

- ✓ Fines are much lower than they are allowed to be within the law. Many of the fines were set many years ago and do not adjust for inflation. What may have been a hefty fine even 10 years ago is approximately 30 percent lower now, due to inflation.

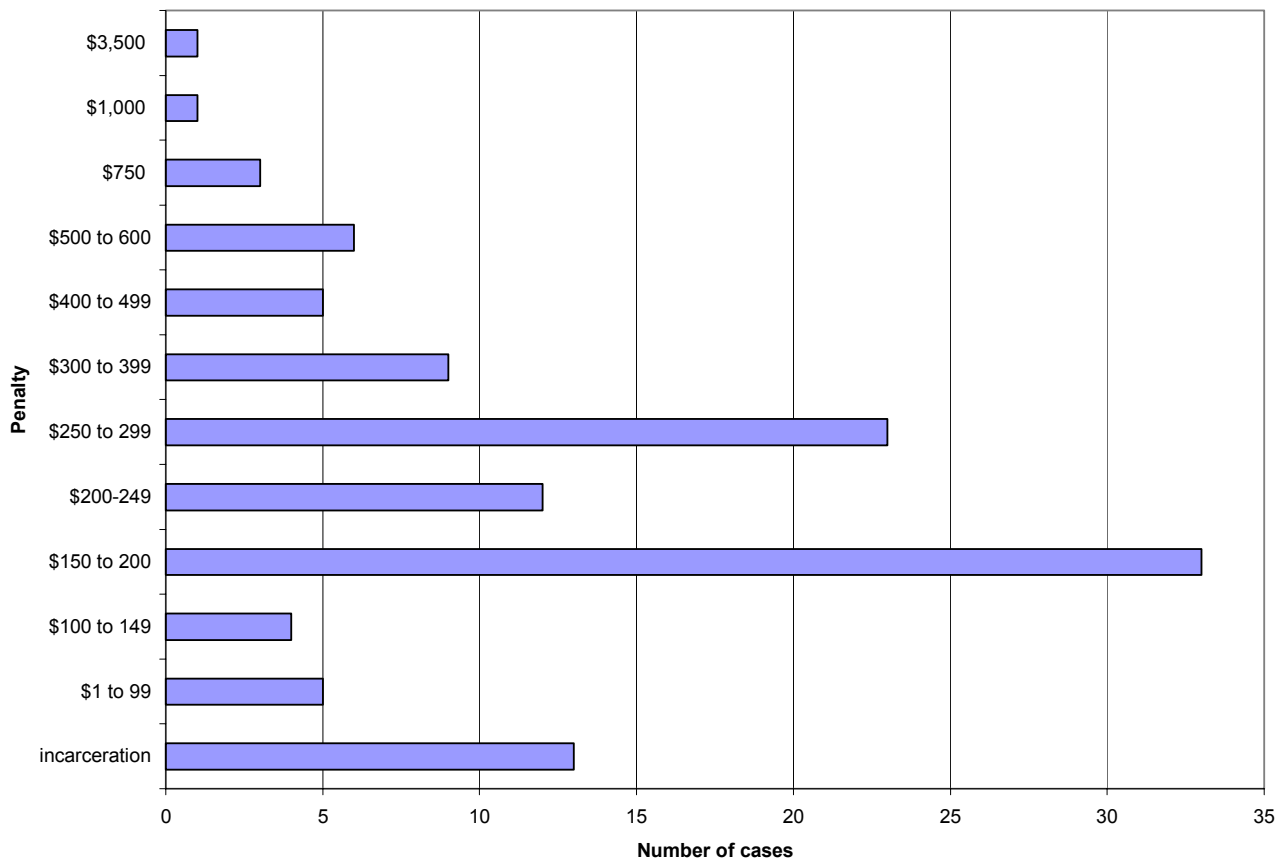
*"Maryland law gives judges the power to impose fines ranging from \$500 for a DWI to \$1,000 for a DUI. The Post found that judges imposed fines averaging \$165 for a DWI and \$192 for a DUI." (The Washington Post, Sept. 24, 2000)*

- ✓ Without even asking if defendants have financial problems, court fees and other costs regularly are waived or reduced by more than half.
- ✓ Probation before judgment (PBJ) is given more frequently by judges than it is requested by the defense or state's attorneys.
- ✓ Unsupervised probation is given more often than supervised probation in DWI convictions, which means that people convicted of drunk driving only have to self-report completion of their sanctions.

*"This is why my wife and I are home by 8:00 every night and why my wife wants to move from the area."*

*Bailiff in traffic court commenting to Court Watch volunteer on the large number of drunk driving offenders who get off.  
(March 19, 2002 Court Watch)*





**Figure 4: Penalties After Suspension of Fines and Costs in Alcohol-Related Traffic Court Cases**

- **The underage factor is not noted in DWI cases:** No one pays much attention to the issue of age in Traffic Court. Rarely is it pointed out that a guilty DWI defendant is also breaking the law by drinking when he or she is under the age of 21. In fact, one judge told an underage DWI offender that he “must abstain from alcohol for a full year” when that youth shouldn’t, by law, be having alcohol at all!

In conclusion, the 2002 Court Watch shows that there may be an unintended disconnect between court personnel’s view that alcohol negatively underlies a huge percentage of all court cases and what volunteers perceived as excessive leniency in sanctions, especially in Traffic Court. The extremely large number of cases as well as the natural courtesies embedded in an egalitarian meting out of justice may lessen the sharp conveying of the harm that is done when young people consume alcohol illegally or when someone who is drinking gets behind the wheel of a car—a deadly weapon—and is caught.

To a person, the Court Watch volunteers agree that part of their task in this initiative is to remind the court that it has a teaching responsibility vis a vis the havoc alcohol can wreak on individuals of all ages and on society, and that no press of court business or sympathy for defendants—young or older—should dim that message.

## **RECOMMENDATIONS**

*"I think that [through Court Watch 2002] we sensitized the system to the community's concern about alcohol-related offenses. Hopefully that sensitivity will continue. I [also] think the data we have compiled will help us to inform the public and the system of what kind of a job is being done in this area and lead to a strengthening of both enforcement and treatment."*

*Gail Ewing, Former County Councilwoman  
Founder of the Drawing the Line Campaign*

At the end of almost six months of observations in both the Criminal and Traffic Courts of Montgomery County's District Court, the data collected by Court Watch volunteers prompts the following recommendations:

### **Overall Recommendations for Both Criminal and Traffic Courts:**

The single over-arching recommendation made by Court Watch 2002 is that:

**Montgomery County's District Court should more consciously and consistently strengthen the message it conveys: Alcohol misuse both by underage drinkers and by citizens who drink and drive is "serious business," with serious sanctions.**

It is serious business to everyone who drives in our community who might be hit by a drunk driver or be the victim of other alcohol-related violence (such as assault, rape, or domestic violence) and it is serious business to young people 18-20 whose development can be affected and whose behavior and/or health can be altered with hugely negative consequences by misusing alcohol.

The District Court, which already is concerned with alcohol being an underlying factor in a large number of the cases it sees, has the ability to convey this message better than it is now doing. To convey this stronger message, the District Court needs to:

- **Strengthen sanctions in alcohol-related cases across the board:**
  - ✓ Raise both fines and community service hours to the upper half of what is permissible under law so as to have greater impact on people judged guilty in either court,
  - ✓ Require alcohol and other drug (AOD) evaluations in more cases.
  - ✓ Mandate supervised probation more often. (Regular urinalysis allows the court clinically to determine ongoing alcohol use and, if needed, to get treatment for addiction.)

(Court Watch volunteers felt that if as a result of their first time through either court, people don't change how they behave vis a vis alcohol, it is very possible that they will turn up in court again on other charges—in domestic violence or in additional DWI cases.)

- ✓ Require both evaluations *and* education for anyone with a prior alcohol-related offense.
  - ✓ Mandate that alcohol education be a part of all diversion programs.
  - ✓ Stop automatically reducing fines and court costs. Require that defendants show proof of economic need before costs are reduced. (The court watchers encourage the judges not to reduce fines or waive fees if there is no specific request by the state’s attorney, the defense attorney, or the individual to do so. Fees should be high enough to cover actual court costs, or at the very least the cost of staff time unless the offender is truly unable to pay that much. Start educating lawmakers about the need to connect fines to inflation rates, otherwise the taxpayer is subsidizing underage alcohol use and drunk-driving practices.)
  - ✓ Grant Probation Before Judgement only in extra-ordinary cases, not routinely. (Volunteers commented that the judges don’t seem to care if the state is pro or con PBJ, they seem almost routinely to grant it.)
- **Judges and state’s attorneys in both courts should take greater advantage of “teachable moments” concerning the dangers of the misuse of alcohol:**

In spite of the press of court business and of the fact that many defendants are first-time offenders, court personnel have an opportunity—some would say a responsibility—to use time in court where alcohol already is a recognized and illegal factor (be it underage drinking or driving while impaired) to point out both its illegality and its danger. Sometimes, but rarely, a car being a many-ton weapon is mentioned by judges or by state’s attorneys. Sometimes, but rarely, the risks run by inebriated teenagers is mentioned. For most people, their appearance in court is a one-time thing—something they will remember and talk about—so they do pay attention. With little additional effort on the part of court personnel, stronger messages can and should be conveyed. An effective message can be delivered in less than 15 seconds.

Note: Police department reviewers of this document point out that officers often do seize the first “teachable moment” as the initial citation is issued. Defendants hearing this message not just from police but also from others in the court system may have enough of an impression made because of the repetition that the seriousness of the alcohol-related offenses might get through to them.

- **Improve Circuit Court backing of District Court decisions:**

Work with the Circuit Court to obtain more of its backing in supporting the fees and sanctions imposed by the District Courts in alcohol-related cases. (District Court judges told volunteers that they don’t impose the allowable fees because defendants will appeal. They will appeal less frequently if the Circuit Court gets the reputation of standing behind the District Court’s decisions.)

- **Tighten the courts' administrative practices:**
  - ✓ Tackle the no-show issue. Court Watch volunteers unanimously felt that there must be a way to reduce the “no shows” in both criminal and traffic courts. If this were done, a great deal of time could be saved, time that could be used for more individualized and better-explained justice. Possible ways to do this could be:
    - ❑ Explain more clearly in writing what defendants must have in hand when they arrive in court (such as a lawyer) so they don't have an excuse for showing up without one. And penalize people who turn up without lawyers after having been asked to get one. This could be part of what determines the waiving of fees. (Note: Court Watch volunteers commented on the large amount of time judges spend informing defendants of their rights to a lawyer—and ways to get one both at a cost and for free. One recommendation is that this issue be more clearly explained in writing as part of the paperwork that precedes arriving in court.)
    - ❑ If someone doesn't show up the first time, fine them or give them an additional number of hours of community service.
  - ✓ Find ways to reduce the number of continuations. They seem to be granted more often than they are justified. This results in more waste of time with witnesses and police having to return repeatedly to court.
  - ✓ Balance the assignment of cases to courtrooms: To reduce the sense of production-line justice, get whoever allocates the cases to a courtroom to balance the number before any given judge on a day, allowing equal attention to all cases and, conceivably, more time for “teachable moments.”
  - ✓ Improve court record keeping:
    - ❑ Reinstitute the police database on underage drinking that was dropped due to lack of manpower. This would guarantee the recording of prior offenses in all cases, which is key information when determining appropriate sanctions. (A first-time offender should be dealt with entirely differently from a second-time offender).
    - ❑ Even though it may take a new state law to do this, routinely share court information about underage drinking as well as drunk driving rulings with the Motor Vehicles Administration (MVA), making the information available for hearings on driving privileges and to insurance companies. This would help protect the public.
- **Find ways to improve the support police get in court:** Possibilities might be:
  - ✓ Although one of the duties of the court is to keep the police force balanced and fair, it was the perception of the Court Watch volunteers that court personnel could give the police more backing. The prosecutor and the police should consciously seek areas where they can work together more as a team.

- ✓ Give police officers called to court in both underage drinking and DWI cases additional in-service training to improve their skills in giving testimony, especially for those officers who testify rarely.
- ✓ Retain and support the Montgomery County Police Department's County-wide alcohol unit<sup>1</sup>. The state's attorney's office strongly relies on the expertise of this unit. Its personnel are experienced in getting evidence and at testifying in court. This small group of officers also is responsible for the majority of underage drinking citations. Those citations do serve to limit young people's sense that they can get away with illegal consumption of alcohol.

### **Recommendations in Underage Drinking Cases:**

Court Watch 2002 recommends that the District Court take steps to increase the impact on young people of the court experience. Ways to do this could include:

- **Penalize youth in a way that affects them individually:**
  - ✓ Reduce the sense of “cookie-cutter” justice by taking a few additional minutes in court to individualize each case and to convey the message of the seriousness of underage alcohol use.
  - ✓ For first-time offenders, continue the emphasis on community service.
  - ✓ If there is any way to do it, find community service work that has some connection to drinking such as helping in hospitals or rehabilitation centers that are serving car accident victims.
- **Hold the line with young people who choose trials:** Young people who go to trial and are judged guilty should have higher fines than those that opt for community service without a trial (some judges are setting post-trial fines at *less than* the cost of doing ACS). These young people choosing trials should pay the full cost of those trials.
- **Increase the education component of community service programs:** Require young people in ACS programs to select education programs as part of their community service hours. Also, make sure ACS staff present to underage first offenders the full array of education programs that are available—and encourage use of the private classes when needed to avoid schedule conflicts or overcrowding of the Corrections Department classes.
- **Target adult males in a social marketing campaign to reduce their willingness to be furnishers of alcohol to minors.**
- **Strengthen sanctions for youth with prior offenses:** Second-time offenders should have a mandatory drug assessment, higher fines, and more community service hours.

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<sup>1</sup> Since July 1, 2002, when the alcohol unit was re-assigned to a single district, citations have dropped to as few as 14 per month from a previous average of over 150.

### **Recommendations in Drunk-Driving Cases:**

*"[The anti-drinking and driving campaign's] 'it's not worth it' slogan will ring true only if prosecutors and judges across the state make it very clear they're using all the tools of the law to get tough, too."*

*Washington Post Editorial, October 5, 2001*

Court Watch 2002's recommendations once again focus on strengthening the message the District Court conveys in drunk driving cases:

- **Judges should speak more forcefully from the bench about the seriousness of drunk driving:** Someone, perhaps the Department of Health and Human Services, should assist the judges and state's attorneys in staying up to date on the dangers to the general public of impaired driving. Such education could include:
  - ✓ A special MADD meeting for the judges themselves.
  - ✓ Re-expose the judges (and others in the court) to the education program the Police Department offers that showcases impairment at different BAC levels. Maybe add to this program information on dangers to the public and costs to the community.
  - ✓ Re-institute the mailing of simple updates to judges and state's attorneys on recent research findings about alcohol and sanctions options (cut short due to staff changes, but an inexpensive effort to consider having as an ongoing program).
- **Increase sanctions:**
  - ✓ The state's attorneys should regularly ask for maximum sanctions.
  - ✓ Make PBJ the exception, not the rule.
  - ✓ Make *supervised* probation standard in drunk-driving cases.
  - ✓ Take away the driving licenses of people judged guilty of drunk driving.
  - ✓ Enlist the car insurance companies in this battle to make sure an individual's payment rate reflects that person's risk for drunk driving, and get these companies to support changes in policy or the law that affect driving.
- **Identify underage drunk driving defendants:** Police, state's attorneys and judges in Traffic Court should pay more attention to the issue of age. (It should be noted for the record that state's attorneys routinely do not identify defendant's age in Traffic Court. Cases are judged based on driving-related issues and rarely—if ever—is it pointed out that the defendants under age 21 should not be drinking at all, much less driving while drinking). When someone is under 21 and is arrested for drunk driving:

- ✓ They should be charged both with the drunk driving charges AND with illegal possession of alcohol.
- ✓ Upon conviction, they should automatically get an alcohol and other-drug evaluation, even for first-time offenses.
- ✓ They should get a “Get your life in shape. You are a public danger.” lecture from the bench.

If the recommendations contained in this report are reviewed and implemented by Montgomery County’s District Court, Court Watch 2002-2003’s workers feel confident that drunk driving and underage drinking—and the harm caused by both—will be reduced in the County.

## **COMPARISON OF FINDINGS** **BETWEEN THE TWO COURT WATCHES** **(1995-1996 AND 2002-2003)**

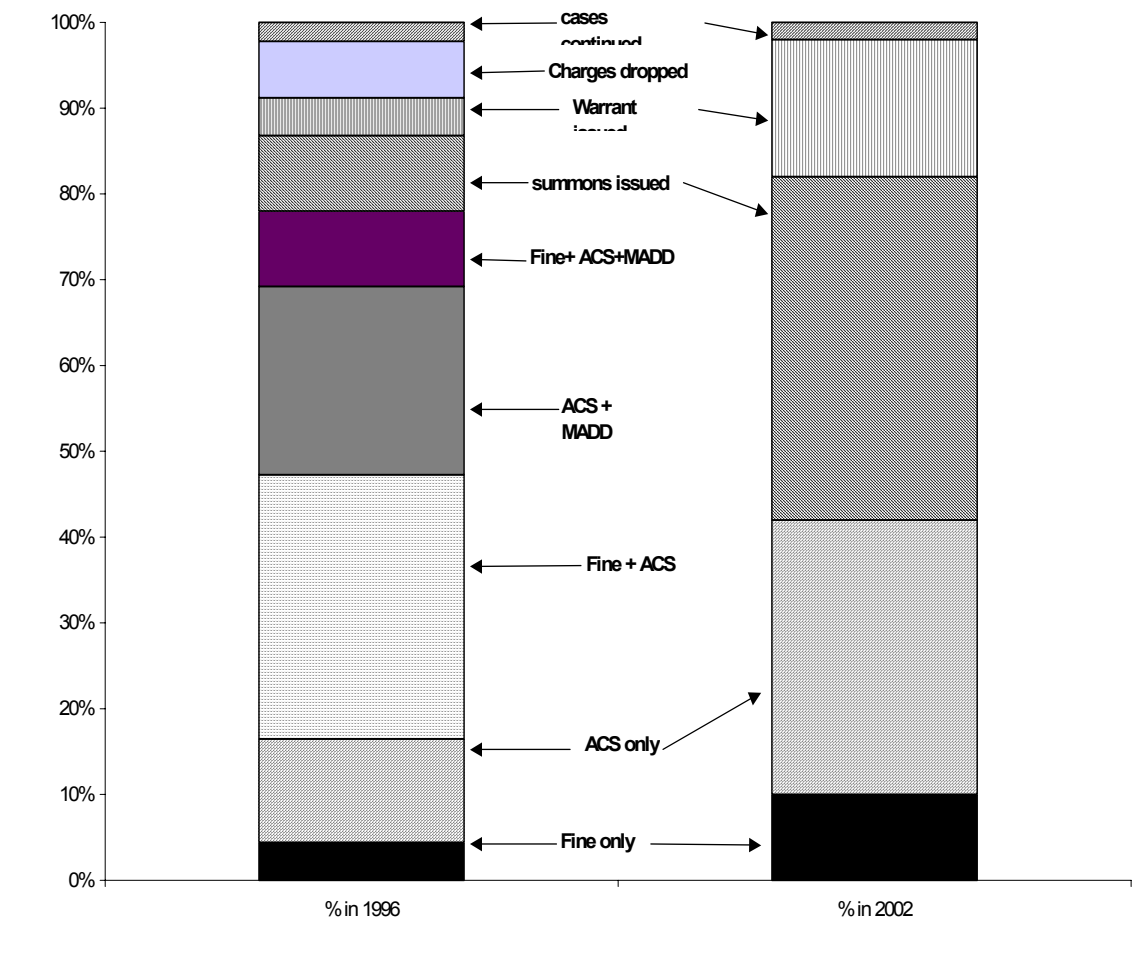
The first Court Watch took place in 1995-1996; the second in the spring of 2002. The first one looked only at underage drinking cases. The second looked both at underage drinking and drunk-driving cases. A comparison of findings from the two court watches only in underage drinking cases shows that several positive changes have taken place and highlights the increased attention paid in the District Court's Criminal Court to underage drinking:

<b><i>1995-1996 Court Watch In Underage Drinking Cases</i></b>	<b><i>2002 Court Watch In Underage Drinking Cases</i></b>
Underage offenders received widely different sentences for the same offense (in terms of hours of community service, fines, and mandated education programs).	Sanctions have become much the same from judge to judge, in part due to the somewhat standardized diversion program (Alternative Community Service, ACS) instituted in the late 1990s by the state's attorneys office.
Females received different sentences from men as well as fewer judicial summons and bench warrants.	Sanctions are now much the same between young men and young women. However, young women are receiving <i>more</i> judicial summons and bench warrants than young men because it seems that women are more likely to be "no shows."
Poor record keeping made it hard to know when it was a first or second underage drinking offense. This meant that second time offenders were getting off and the court was not taken seriously by youth.	Record keeping is not much better, but the memories of the police officers and the even-partial records kept by ACS staff seem to be doing a pretty good job of identifying young people with priors. (This record keeping was better for a while between the two court watches and it could—and should—be much improved.)
"No-show" offenders often slipped between the cracks. Third time no-shows usually were dropped!	"No shows" both delay court proceedings by wasting time <i>and</i> they still seem to slip between the cracks, but rarely are they now dropped completely.
Defendants frequently did not receive much of a message on the illegality of underage drinking.	Although some judges speak to youth during court time about the illegality of underage drinking, the majority do not. This message is still not regularly and clearly conveyed.
A lack of resources within the justice system made it difficult—if not impossible—to spend enough time on each case be it underage drinking or drunk driving that allows for a "teachable moment"	This is still true. Assembly-line justice reduces the impact on any one individual or case. Only ACS intake officers have the opportunity to discuss with young people the implications of their behavior (and they need to be encouraged to regularly take advantage of this opportunity).

**Figure 5: Comparison of the 1996 and 2002 Court Watch Findings in Underage Drinking and Furnishing-Alcohol-to-a-Minor Cases**

*Note: Comparative information is not being provided in chart form for drunk-driving cases since the 2002-2003 Court Watch is observing them for the first time.*



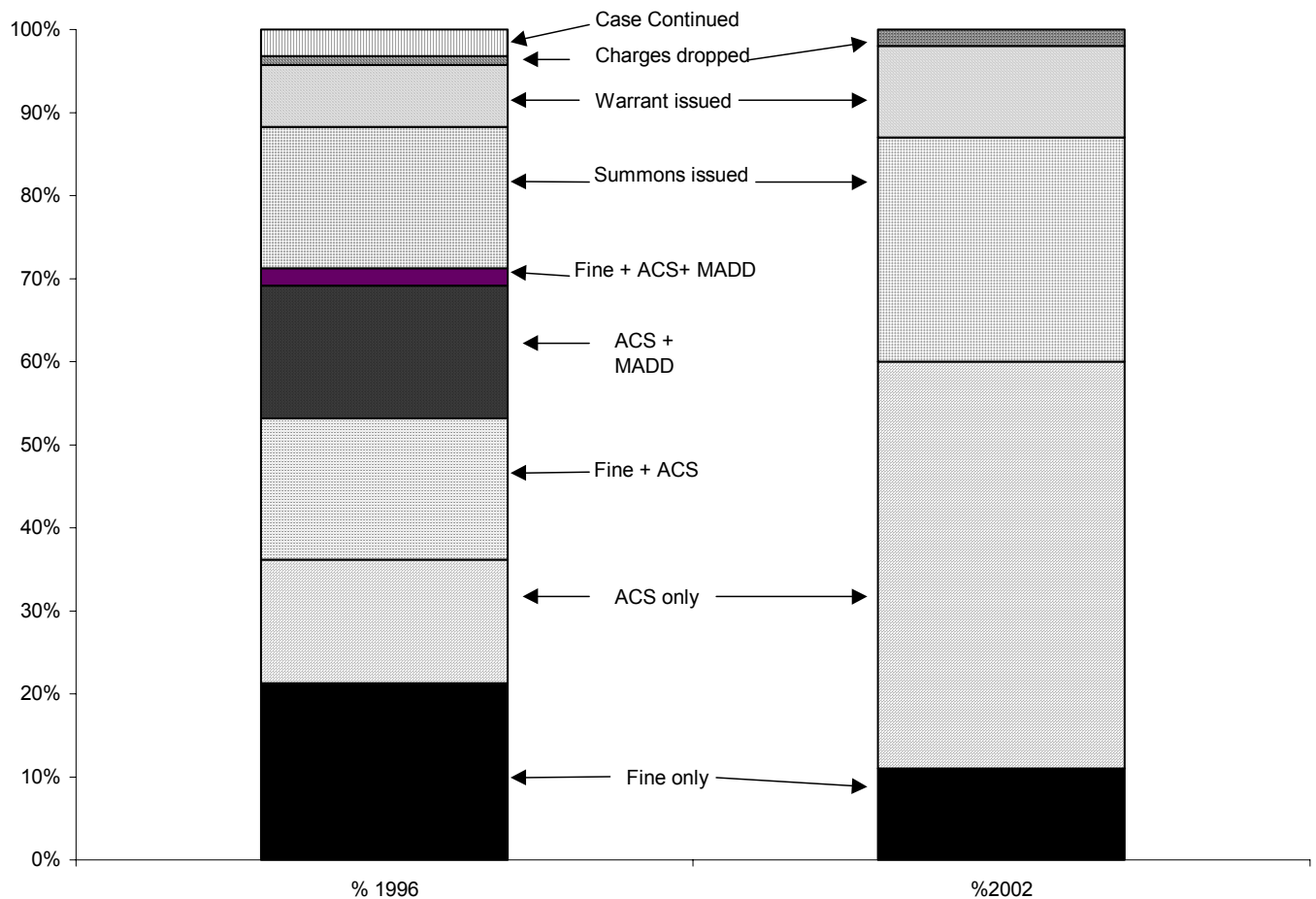


**Figure 6:** Comparison in How Female Defendants Are Handled in Underage Drinking Cases (1996 and 2002)

In 2002, judges issued more summonses and warrants to female defendants and dropped fewer of their cases than was true in 1996. Alternative Community Service diversion programs are used more in 2002 than in 1996 and fines and Mothers Against Drunk Driving (MADD) victim-impact panels are used less in 2002 than in 1996.

**Glossary:**

- ❑ “Cases continued” means that judges allow a defendant to come back on a subsequent date without penalty. (This is often done when a youth is away at college.)
- ❑ “Charges dropped” means that a case is not prosecuted for whatever reasons make sense to the state’s attorney and judge.



**Figure 7: Comparison in How Male Defendants Are Handled in Underage Drinking Cases (1996 and 2002)**

In 2002, compared to 1996, males were less likely to be fined and more likely to be given Alternative Community Service. The MADD victim impact panel is no longer being used by 2002. In 2002, summonses and warrants are more common and cases are less likely to be continued.

In all cases, male and female, the penalty pattern is less complex and more standardized, with ACS being a regularly offered alternative.

## **SUMMARY OF CONCLUSIONS**

An overview of findings and recommendations can be found in the Executive Summary of this report. An in-a-nutshell view of what the 2002 Court Watch project learned is that:

- ❑ Improvements have been made in the District Court's Criminal Court's handling of underage drinking cases since the 1995-1996 Court Watch, both in the standardization of sanctions and in the regular offering of alternative community service as an option for first-time offenders.
- ❑ There also has been a definite improvement in the follow-up the court does on "no shows." Whereas in 1996 if people didn't show up in court a third time they were due there, the cases often were dropped. This no longer is true. Although this report recommends that there be actual sanctions tied to repeated failure to appear in court, the court's track record of pursuing cases is definitely improved.
- ❑ Improvements still need to be made in conveying to defendants the seriousness of their time in court both through the demeanor of the court and through the strengthening of sanctions.
- ❑ In spite of alcohol underlying a large proportion of cases in Montgomery County District Court in both Criminal and Traffic divisions and in spite of seemingly genuine concern on the part of judges, state's attorneys, police and others involved in the court system, the District Court is still not strongly and consistently conveying the message during time in court that alcohol misuse either by young people ages 18-20 or by anyone driving cars is dangerous and destructive both to the individuals involved and to our community at large.
- ❑ With little, if any, additional cost except a few seconds of time, a stronger message can be conveyed by judges and state's attorneys as they personally deal with individual defendantss before and during time in court and as they propose and mete out sanctions.
- ❑ Especially the Traffic Court, in the opinion of Court Watchers, does not convey either to the defendantss or to the community at large the seriousness of drunk driving. Sanctions differ from judge to judge, fines and court costs routinely are waived without even an overt request by the defendants, and probation before judgment is offered on a routine basis (in the view of the Court Watchers) in a surprisingly high number of cases.
- ❑ Although The Washington Post series of September 2000, which was based on an 18-month study, brought big-time attention to this issue and supposedly some tightening of sanctions, the 2002 Court Watchers, who worked less than six months and were observers as opposed to researchers, saw the same things still happening that the articles highlighted.
- ❑ To reduce the number of alcohol-related cases in court and to protect our community's young people as well as anyone who drives on its roads, Montgomery County's District Court needs to do a better job both on the bench and also in its court practices of conveying the message—both through the voices of judges and through sanctions imposed—that alcohol misuse is dangerous and not tolerated in our community.

## **APPENDIX:**

- Fact Sheet Describing the 2002 Court Watch
- Sample Court Observation Form
- Court Watch Volunteer Training Agenda and List of Materials, January 2002
- Findings and Recommendations from the 1995-1996 Court Watch.

*To obtain a copy of the First Court Watch Report or additional copies of this report, contact Montgomery County's Office of Substance Abuse Prevention Programs in its Department of Health and Human Services. 240-777-1311.*

## **FACT SHEET**

### **Montgomery County's 2002 "Court Watch" Project** **Looking at the Impact of the Judicial System on Underage Drinking**

**What's Up?** To improve how the different parts of our judicial system interact as they touch young citizens ages 18-20 who are in court because of illegal underage alcohol use, including driving while they are impaired (DWI), Montgomery County, Maryland, has decided to stage a "Court Watch." All the parties involved—the police, judges, state's attorneys, prevention personnel, treatment providers, and the County's Department of Corrections—have raised concerns about how underage drinking is handled within our justice system. Are young people being dealt with in a way that educates them about the potential destructiveness of alcohol use? Are cases handled fairly, with standard protocols across the board? Are we reducing recidivism and preventing future dangerous crimes? Are repeat-offender sanctions being implemented? Are the different parts of the court system meshing efficiently and building on each other's messages?

**What's the Problem?** All of the County's justice system partners realize that underage drinking, in addition to interfering with young people's healthy growth and development, can lead to car crashes, date rapes, vandalism, and violence. When youth ages 18-20 are cited by the police for underage alcohol possession or consumption, for using fake IDs, or for driving under the influence of alcohol, they must appear in the County's District Court. Adults who have helped them get their hands on alcohol also end up in court charged with furnishing. The way these young people are dealt with by court officials has an impact on how seriously they take the issue of underage drinking. It can also affect their attitudes towards alcohol as well as towards the justice system for the rest of their life.

**What Is the 2002 "Court Watch"?** Over two different periods of several weeks during the spring of 2002, approximately 10 Montgomery County citizens will sit in County courtrooms to observe how the 18-to-20-year-olds who have been cited by the police for illegal alcohol use and for driving while impaired are handled by District Court officials (judges, police, state's attorneys, court clerks, and community service personnel). These volunteers will record data regarding each underage alcohol case. Volunteers will observe at District Court morning sessions on those days each month when underage alcohol cases are clustered. They will also observe DWI cases on weekday afternoons in the District Court's Traffic Court. Subsequently, these observations will be tabulated and analyzed. A profile will emerge of each player's decisions, role, and actions as well as how the parts of the puzzle interact. This information will serve as a base for making recommendations about how to increase the impact of the court experience on County youth.

**Court Watch Outcomes** – This court watch will produce suggestions on how to:

- ✓ Improve the interaction of the different parts of the court system to increase both efficiency and effectiveness in handling underage alcohol cases.
- ✓ Reduce caseloads in court by decreasing repeat offences (preventing low-level offenders from moving deeper into the justice system where they use more court resources).
- ✓ Increase the positive impact on young people of their time in court so that they understand the law, have a healthy respect for sobriety, and operate as more responsible citizens both before and after age 21.

**Who Is the Sponsor?** -- The lead sponsor of the court watch is *Drawing the Line on Under 21 Alcohol Use* (DTL). This program has been operating across the County for 10 years. It brings together 30 to 40 public and private organizations involved in prevention activities, including municipal, county, regional, state, and federal law enforcement agencies; schools; the County Executive, the County Council, and the County's Departments of Health and Human Services, Recreation, Liquor Control, and License Control; State Departments of Juvenile Justice and Highways; civic and non-profit organizations; and businesses. This coalition is committed to a broad range of underage alcohol prevention efforts.

**History** – Court watches have been used across the country for many years as a tool to sharpen the way certain issues, including underage alcohol use, are handled in a given jurisdiction. Montgomery County conducted its first underage drinking court watch in 1995-1996. From that watch stemmed recommendations on making sentences for young people consistent for similar charges, on ways to handle youth with repeat alcohol-related offenses, on the value of following up with youth who don't show up for their day in court, and on the importance of using young people's time in court as a "teachable moment."

Since that court watch, over half of the judges and many of the other professionals in the District Court have changed, new diversion programs have come into being, and improved data collection is giving County officials better information about drunk driving trends as well as about the life-long effects of underage alcohol use. Several partners within the DTL consortium, including the courts, have requested that another watch be conducted in order to raise once again the profile of underage alcohol cases, to improve the way they are handled by the various arms of the court, and to increase the impact of the judicial process on young people.

**Timetable:**

- ✓ Fall of 2001 – Judges, police, attorneys, and other court officials are providing input into the design of this court watch.
- ✓ Early in 2002 -- Volunteers will receive training from the police, state's attorneys, a judge, and experienced court observers.
- ✓ Late Winter and Spring 2002 – During two several-week periods, volunteers will observe cases both in general District Court sessions and the District's Traffic Court.
- ✓ Early Summer 2002 – A report and recommendations will be released. This report will be used both to improve the County's judicial systems and also to stimulate media and community interest in reducing underage drinking.

**Complimentary Activities** – To augment and complement the 2002 Court Watch, additional activities will include holding focus groups of youth who have been through the courts to ascertain the impact of the court experience as well as the effect of different diversion programs and updating key court officials on current data that showcases the negative impact of alcohol on the community. Throughout the Court Watch period, suggestions will be solicited from all those involved with youth as they go through the courts on the assumption that broad participation can stimulate creative recommendations about ways to improve the system and the youth it serves.

**For more information or to volunteer, contact:**

Nancy Rea, Coordinator, *Drawing the Line on Under 21 Alcohol Use*  
Montgomery County Department of Health and Human Services  
(240) 777-1123 or e-mail: [Nancy.Rea@co.mo.md.us](mailto:Nancy.Rea@co.mo.md.us)

## COURT OBSERVATION FORM

### COURT WATCH 2002

*Fill out as much as you can ahead of time. Some cases may show up that are not on the docket.  
Record what you can and ask the State's Attorney or Court Clerk for case number.*

Observer	Date	AM	PM	Judge
State's Att.		Court room #		

Case #	
Last name	First name
Charges: 1st	
2 <sup>nd</sup>	
3 <sup>rd</sup>	
4th	

Police officers:	Present?
	Present?
	Present?
	Present?

#### Information that can be verified by police officer:

Age
Sex
Prior Offenses
Additional info

#### Defendant:

Present	No show	If no show, action by court:			
Attorney	No attorney	Name:			
Parent	No parent	Can't tell if parent is present			
Mastery of English	1(not English speaking)	2	3	4	5 (fluent English)
Language interpreter used?	yes	no	Language:		

#### Court action:

Diversion offered	yes	Refused (why?)	No (why?)
# of hours			
Continued		Why	
Judicial summons?	Y/N	Bench warrant?	Y/N
Nol Pros (why?)			

Prior offenses?

**Trial:**

Plea	guilty	Not guilty	To what charge?		
Verdict	guilty	Not guilty	To what charge?		
sanctions					
MADD impact panel	yes	no			
Education	yes	No	length		
Evaluation/treatment	yes	no	details		
probation	Yes (length)	no	Supervised? Y/n	Fee waived? Y/n	
Incarceration?	length	Details			
Fine	Amount \$	Waived? Y/N			
Court costs	Amount \$	Waived? Y/N			

**Comments:**

Judge

How does this judge address alcohol as a serious factor in this case/these cases (circle one):  
 1 (not a serious issue)                      2                      3                      4                      5 (a very serious issue)

State's Attorney

Defendant

Observer's comments on actions in court:

Observers comments on watch process:



## **COURT WATCH VOLUNTEER TRAINING AGENDA**

*January 29, 2002 – 8:30 a.m. to 3:00 p.m.*

*Circuit Court Building, 50 Maryland Avenue*

*Third floor library (Room 326) -- Large conference room #12*

*(240) 777-9120*

- 8:30 a.m.      Welcome and introductions – Nancy Rea, Director, Montgomery County’s *Drawing the Line on Underage Drinking* initiative
- 8:35-9:00      Overview of Court Watch:
- ✓ Goals of this initiative.
  - ✓ Description of the steps young people cited for underage drinking and driving while under the influence and while impaired (DUI & DWI) go through during their day in court—Nancy Rea and Cappie Morgan, Consultant to the Court Watch
- 9:00-10:00      Roles of key players in underage drinking cases:
- 9:00-9:20 a.m.      Police: Officer Bill Morrison, Montgomery County Alcohol Initiatives Unit
- ✓ Steps in handling young people from citation through the court process
  - ✓ Role of police in the courtroom and with Alternative Community Service (ACS) staff
  - ✓ Roles of other police departments in underage alcohol cases
  - ✓ What court watchers should look for
  - ✓ Ways police can help volunteers
- 9:20-9:45      Diversion and alternative community service (ACS) programs: Bill Zegowitz, Program Manager, Pre-Trial Diversion Unit, County Department of Corrections
- ✓ Overview of purpose of diversion and ACS (ACS as a one-time opportunity for first-time alcohol possession offenders)
  - ✓ Steps in the ACS process from interview to expungement
  - ✓ What court watch volunteers should look for
- 9:45-10:00      Roles of others in the courtroom (floor plan):
- ✓ Judges
  - ✓ State’s Attorneys and defense attorneys
  - ✓ Court clerks and bailiffs
- 10:00-10:15      Specific tasks of court watchers (review of observation form, of today’s a.m. docket, and of courtroom protocols)
- 10:15-10:30      Walk to courthouse
- 10:30-11:45      Observation in District Court  
Visit to courtroom 201 to practice observation of underage drinking cases

11:45-Noon	Return to training room for lunch (provided by Court Watch initiative)
12:00-12:45 p.m.	Lunch and Q&A
12:00-12:30	<u>State's Attorneys Office</u> —Danny Barnett, Assistant State's Attorney <ul style="list-style-type: none"> <li>✓ Role of state's attorneys in both underage drinking and alcohol-related traffic cases (DUI/DWI)</li> <li>✓ Relationship of state's attorneys to others in the court process</li> <li>✓ What volunteers should look for</li> <li>✓ Ways in which state's attorneys can help volunteers</li> </ul>
12:30-12:45	Look at sample afternoon Traffic Court dockets (with the help of Danny Barnett)
12:45-1:00	Q&A
1:00-1:15	Return to courthouse. Visits to two traffic court courtrooms (101 and 202)
1:15-2:15	<u>Observation in Traffic Court</u>
2:15-2:30	Return to training site
2:30-3:00	Review of practical issues related to the role of volunteers (timetable of Court Watch; scheduling and backup of volunteers; filling out of observation form, summary sheets, and feedback forms). Q&A

### **Court Watch 2002 Training Materials:**

- Training agenda: January 29, 2002 8:30 a.m.-3:00 p.m.
- Select statistics re: underage drinking and the potential effects of a crash
- Findings and recommendations of first court watch
- Flow chart of underage alcohol cases
- Courtroom floor plan
- Courthouse layout and timetables of underage drinking and DWI cases
- List of names of people volunteers may observe in court:
  - ✓ Judges and their February and March schedules
  - ✓ State's Attorneys and February schedule
  - ✓ ACS personnel and nature of diversion programs
- Observation tools:
  - ✓ Observation form for both underage drinking and traffic courts
  - ✓ Session summary sheet
  - ✓ Feedback form
- Guides:
  - ✓ Guides for Court Watchers sheet
  - ✓ Volunteer calendar

## **FINDINGS AND RECOMMENDATIONS**

### **1995-1996 Court Watch**

*Montgomery County's first Court Watch that focused on underage drinking was conducted in 1995 and 1996. Details from this watch follow:*

#### **Process of Conducting the Court Watch:**

- Fourteen volunteers observed a total of 213 cases during 21 days over a 9-month period.
- Only underage drinking cases in the District Court were observed (no DUI or DWI cases in Traffic Court).
- In addition to filling out observation forms following each court visit, volunteers met twice to discuss their experience and to make preliminary recommendations about how to improve the handling of underage drinking cases.

#### **Findings:**

- Underage offenders received different sentences for the same offense:
  - ✓ Judges gave different combinations of community service hours, education programs, and fines.
  - ✓ Females received different sentences from men as well as fewer judicial summons and bench warrants.
- Poor record keeping made it hard to know when it was a first or second underage drinking offense.
- “No-show” offenders often slipped between the cracks.
- Defendants frequently did not receive much of a message on the illegality of underage drinking.

#### **Recommendations:**

- Make sentences consistent for similar charges.
- Keep better track of citations for underage drinking (so that youth who are cited more than once are noted by and dealt differently with by the system).
- Improve the follow-up on offenders who do not show up.
- Provide more resources for the justice system so that more time can be used to spend on each case and to talk to each youth.
- While youthful offenders are in court, take better advantage of a “teachable moment” vis a vis the dangers of alcohol and the illegality of underage use.